APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
[Filed February 20, 1997]

ANGEL WATKINS *
1510 Pennsylvania Avenue
Apt. 102 *
Baltimore, Maryland 21215
*
Plaintiff
*
vs.
*
PROFESSIONAL SECURITY
BUREAU, LTD. *
1301 York Road
Suite G 1 *
Lutherville, Maryland 21095
*
SERVE ON:
*
Corporate Trust, Inc.
32 South Street *
Baltimore, Maryland 21202
*
Defendant

****

COMPLAINT AND REQUEST FOR A JURY TRIAL

JURISDICTION

Now comes the Plaintiff, Angel Watkins, by her attorney, A. Dwight Pettit, and says:

1. The jurisdiction of the Court is brought pursuant to 28 U.S.C. 1343(4). This suit is brought pursuant to Title VII of the Civil Rights Act, 42 U.S.C. 2000e et seq. as amended.

2. Plaintiff filed a charge of sex discrimination, harassment and retaliation with the E.E.O.C. on or about September 18, 1996 and November 10, 1996. Plaintiff received a Notice of Right to Sue dated December 17, 1996 which is attached hereto. The discrimination was and is being committed in the State of Maryand.

PARTIES

3. Plaintiff, Angel Watkins, is a female citizen of the State of Maryland.

4. Defendant, Professional Security Bureau, Ltd, does business in the State of Maryland. It is an employer within the meaning of Title VII of the 1964 Civil Rights Act. Its business affects interstate commerce.

CAUSE OF ACTION

5. That the Plaintiff, Angel Watkins, reincorporates as fully stated herein the allegations of Paragraphs 1 through 4.

6. That Plaintiff was employed by the Defendant Professional Security Bureau, LTD. in and around July, 1995 and was subject to constant sexual harassment by the Defendant's Director of Security.

7. That Plaintiff did not acquiesce [to] or condone the sexual harassment she was subjected to by her Supervisor. Plaintiff was subject to constant sexual harassment, including but not limited to the following as detailed in her Complaint to the Equal Employment Opportunity Commission.

8. In May of 1996, Plaintiff was reprimanded for bringing her children to work. She was then told by her immediate supervisor, Ed Kelly, that she owed him a favor

(allegedly for intervening in said reprimand proceeding in favor of the Plaintiff) whereupon, he forced the Plaintiff to have sexual intercourse.

9. In August of 1996, the Plaintiff reported the matter to Supervisor Don Decola, who indicated that this matter would be investigated.

10. Ed Kelly approach Plaintiff, again, in August of 1996 and, again, demanded sexual favors in return for his intervention in another personnel matter involving Plaintiff.

11. The Plaintiff, having been forced to have sex on the first occasion, was able to avoid same upon this encounter.

12. On September 16th, Mr. Decloa called the Plaintiff and indicated he would take care of the matter.

13. The Plaintiff was subsequently terminated.

14. Said termination was due to a retaliation for the Plaintiff's reporting of said sexual contacts and overtures by Ed Kelly.

15. The Defendant, Professional Services Bureau, Ltd., wrongfully hired and maintained the employment of Ed Kelly knowing he had a reputation and past history of approaching female co-workers seeking sexual favors.

16. That as a result of the sexual acts perpetrated Ed Kelly the Plaintiff was unable to properly perform her job.

17. That Defendant engaged in a pattern of sexual harassment and allowed same from its male employees against female employees.

18. As a result of the acts perpetrated by the Defendant, the Plaintiff has suffered humiliation, embarrassment, and emotional trauma and loss [of] income.

WHEREFORE, the Plaintiff prays this Honorable Court to grant her the following relief:

(1) Declaratory and injunctive relief ordering her job

reinstated with back pay and an order prohibiting the Defendants from engaging in further sexual harassment;

(2) Punitive and compensatory damages;

(3) Attorney fees, interest and costs; and

(4) Such other and futher relief as the Court deems necessary.

Respectfully submitted,

/s/

A. DWIGHT PETTIT
3500 Hilton Road
Baltimore, Maryland 21215
(410) 542-5400
ATTORNEY FOR PLAINTIFF
01697

PRAYER FOR JURY TRIAL

Plaintiff prays to have this case tried by a jury.

/s/

A. DWIGHT PETTIT

APPENDIX B

Ruling from the bench, decision of United States District Court for the District of Maryland, as to punitive damages, at hearing of September 4, 1998, following jury verdict awarding compensatory damages:

THE COURT: Thank you, gentlemen. The Court is prepared to rule.

Initially, I think the law is clear that punitive damages must be proven by a preponderance of the evidence. More specifically, the plaintiff must show that the defendant acted with malice or with reckless indifference to the plaintiff's right not to be discriminated against on the basis of her sex and--I think, more specifically, the Harris case--I am talking about Harris v. Wing, 132 F.3d 978, that is a Fourth Circuit case, decided in 1997--has some very pertinent language; and I quote:

> 'Punitive damages are an extraordinary remedy to be reserved for egregious cases. It is well-established'--and this is omitting citations--'that exemplary damages are not an element of recovery in every case involving an intentional tort. Specifically, the text and background of the Civil Rights Act of 1991, which authorizes punitive damages, emphasized that this extraordinary remedy is not to be awarded automatically in every successful Title VII suit. The 1991 act approves punitive damages--and

I am citing from Page 982 of the opinion. Repeating:

> 'The 1991 act approves punitive damages only if the complaining party demonstrate[s] that the respondent engages in a discriminate practice or discriminate [p]ractices wth malice or with reckless indifference to the federally protected rights of an aggrieved individual.

> Indeed, plaintiffs must first prove intentional discrimination. They must prove actual injury or loss arising therefrom to recover compensatory damages and must meet an even higher standard establishing that the employer acted with malice or reckless or callous indifference to their rights to recover punitive damages.'

To a similar effect is another Fourth Circuit case, which I think is relevant, that is Notter, N O T T E R v. North Hand Protection, 89 F.3d 829, 1996, quoting from page--I don't have a page number. I have the quotation from West:

> 'We recognize that punitive damage awards should be carefully scrutinazed so as not to become vehicles for unbridled retribution. The statute, however, already addresses these concerns in two ways: 1) by providing that punitive damages may be awarded only in cases where the defendant either acts maliciously or out of reckless indifference toward the plaintiff for federally protected rights; and 2) by providing for caps in damage awards. We see no need to impose additional limits on punitive damages when Congress could have done so but [did] not.'

Now, against that background, this motion by the Defendant for a directed verdict under Rule 50, the question is whether, based on the evidence before a jury reasonably could have awarded punitive damages.

Given that consideration, the Court finds as follows: In this case, the Defendant did have a written policy prohibiting discrimination. Undisputedly, that policy existed since 1991 or 1992. Also, it is undisputed that there were posters throughout the plan indicating that sexual harassment would not be permissible.

The undisputed evidence also indicates that that policy

was disseminated among the employees, although the Court is aware of the fact that Plaintiff did not herself receive a copy of the handbook and apparently did not see the posters.

In any event, I think the jury could, based on the evidence, I think it is with respect to the handbook, the evidence is undisputed that there was a handbook distributed to employees and that posters were circulated.

Beyond that, there is no disputed--I beg your pardon. The evidence--the overwhelming evidence is to the effect that training was given to employees of the defendant company.

Now, beyond that, looking at the evidence in a light most favorable to the Plaintiff, as the Court must, it shows that the Defendant--the Plaintiff testified that she was raped in May of 1996. She also testified that she did not bring that incident--that horrible incident, if you will--to the attention of anybody in the company until August, almost three months later. And she did not, however, advise her supervisors that she was raped. She indicated, at best, that, number one, Mr. Kelley groped her--fondled her breast; and secondly, that Mr. Kelley had reached under her skirt and under her pants. There is no evidence in the record, whatsoever, that the company was aware until much later after the termination of the Plaintiff and Mr. Kelley that a rape had occurred.

Beyond that, the situation that she told Ms. [Hazel] Dowling and Mr. [Donald] Nicola about was certainly reprehensible. There is no question about that, and there is no dispute with respect to its reprehensibility.

However, the Court notes that the evidence shows that this incident did not--was not a continuing one; there was no continuum. It occurred once, and that was in May. There was no repetition.

Beyond that, the evidence shows that when that was

brought to the attention of the Plaintiff's supervisor, Ms. Dowling, she advised, I do not know when, her supervisor, Mr. Nicola.

Furthermore, when this came to the attention of Mr. [Charles] Fisher, the vice president of the company, he advised Mr. Kelley, who was the perpetrator, that this would not be repeated--or rather he told Kelley--I beg your pardon. The evidence shows that Fisher told Kelley to stay away from her. There is no evidence of similar conduct by Kelley or by any other employee of the defendant company.

Given all the circumstances here, the Court cannot find that the conduct in question was so egregious as to warrant the imposition of punitive damages. More specifically the Court finds that no jury could reasonably find the existence of punitive damages.

In that circumstance, the Defendant's Motion for Directed Verdict under Rule 50 with respect to Punitive Damages is hereby GRANTED.

I do not think there is anything else at the moment. The Court will now recess.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

*

ANGEL WATKINS

*

Plaintiff,

v. * Civil No. L-97-520

PROFESSIONAL SECURITY
BUREAU, LTD.

*

Defendant.

* * * * * * * * * * * * * *

ORDER OF JUDGMENT

The jury having returned a verdict in favor of plaintiff Angel Watkins against defendant Professional Security Bureau, Ltd., it is this 4th day of September, 1998,

ORDERED

1. That judgment is entered in favor of plaintiff Anegl Watkins against defendant Professional Security Bureau, Ltd. in the amount of $3,222.00 for medical expenses (three thousand, two hundred, twenty-two dollars and zero cents); and $60,000 for pain, suffering and mental anguish (sixty thousand dollars and zero cents); for a total of $63,222.00 (sixty-three thousand, two hundred and twenty-two dollars and zero cents).

2. Any and all prior rulings made by this Court disposing of any claims against any parties are incorporated by reference herein, and this Order shall be deemed to be a final Judgment within the meaning of Fed. R. Civ. P. 56.

Herbert N. Maletz
Senior Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGEL WATKINS	)	
Plaintiff,	)	
v.	)	Civil No. L-97-520
PROFESSIONAL SECURITY BUREAU, LTD.	)	
Defendant.	)	

MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL

COMES NOW defendant, pursuant to Rule 50 of the Federal Rules of Civil Procedure, and moves the Court for entry of an order granting defendant judgment as a matter of law, or, in the alternative, a new trial.

This Motion is based upon a Memorandum of Points and Authorities filed herewith which indicates that the verdict returned in this case is inconsistent, does not comport to the evidence presented at trial and that defendant is entitled to judgment as a matter of law.

Professional Security Bureau Ltd.
By Counsel

ARTHUR, PEARSON & MARTIN, LTD.
101 West Broad Street, Suite 500
Falls Church, VA 22046
/s/

Paul R. Pearson
Counsel for Defendant

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGEL WATKINS Plaintiff, v. PROFESSIONAL SECURITY BUREAU, LTD. Defendant.	)	Civil No. L-97-520

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL

COMES NOW defendant, pursuant to Rule 50 of the Federal Rules of Civil Procedure, and in support of its Motion for Summary Judgment as a Matter of Law, or, in the Alternative, For a New Trial and states as follows:

FACTS

1. Plaintiff brought this action against her former employer claiming sexual harassment pursuant to Title VII perpetrated by her supervisor Edward Kelley (hereafter "Kelley").

2. A jury trial was had in this matter commencing on August 31, 1998 and continuing to Septembr 3, 1998.

3. Uncontroverted evidence introduced at trial indicated:

a. Defendant had a written policy against sexual harassment.

b. The sexual assault which forms the subject of plaintiff's claim occurred in May, 1996.

c. The first information which defendant received about this sexual assault was sometime between August 13, 1996 and August 23, 1996.

d. The plaintiff reported to defendant and to certain co-workers only that Kelley had fondled her. At no time during her employment with defendant did plaintiff or anyone else report to defendant that Kelley had forced plaintiff to have sexual intercourse with him.

e. As soon as defendant received notice of the fondling alleged by Plaintiff, defendant told Kelley to stay away from Plaintiff and to have no further contact with her.

f. Plaintiff herself acknowledged that she thereafter had no further contact with Kelley from the time she reported to defendant that Kelley had fondled her to the time her employment was terminated.

g. Plaintiff, on many occasions, did not perform her job duties in a professional manner, including but not limited to arriving at work without being in uniform, leaving her post, bringing her children to work, and performing in a manner causing defendant to lose income, all of which was justification for terminating her employment.

4. The special verdict form returned by the jury found as follows:

a. For the defendant on the issue of whether quid pro quo harassment had occured.

b. For the plaintiff on the issue of whether a hostile work environment had been created.

c. For the plaintiff on the issue of whether she had been retaliated against for reporting the sexual assault perpetrated by her supervisor.

5. The jury was given a jury instruction entitled "'Quid Pro Quo' Sexual Harassment" which instructed them that the third element of quid pro quo sexual harassment was "that her reaction to the harassment resulted in her discharge," and directed them that, "If you find that Ms. Watkins has demonstrated that her acceptance or rejection of Mr. Kelley's sexual advances was the real reason behind the decision to terminate her, then you must find for Ms. Watkins on this claim" [i.e. the claim of quid pro quo sexual harassment.]

6. The jury was also given a jury instructino entitled "Title VII Retaliation Claim" which included as its third element, "that a causal connection existed between her complaint about Mr. Kelley's conduct and her termination," and directed them that, "If you find that Ms. Watkins has demonstrated that her complaining about Mr. Kelley's conduct was the real reason behind the decision to terminate her, then you must find for Ms. Watkins on this claim."

7. At the charging conferences, counsel for defendant objected to the giving of both of these instructions on the basis that they were duplicative, however, both instructions were given.

8. The jury was given a Verdict Form with three question[s], to wit:

a. "Do you find in favor of plaintiff or defendant on plaintiff's claim of quid pro quo sexual harassment?"

b. "Do you find in favor of plaintiff or defendant on plaintiff's claim of sexual hostile work environment?"

c. "Do you find in favor of plaintiff or defendant on plaintiff's claim of retaliation."

9. During its deliberations, the jury sent the Court

a note asking for a definition of the words "quid pro quo." This jury was instructed by the court that the words "quid pro quo" mean literally "this for that" and the jury was again instructed by the court as to the elements of quid pro quo as contained in the Court's instruction.

10. The Verdict Form returned by the jury, a copy of which is attached hereto, contained the following:

a. In favor of the defendant on the question, "Do you find in favor of plaintiff or defendant on plaintiff's claim of quid pro quo sexual harassment?"

b. In favor of plaintiff on the question, "Do you find in favor of plaintiff or defendant on plaintiff's claim of sexual hostile work environment?"

c. In favor of plaintiff on the question, "Do you find in favor of plaintiff or defendant on plaintiff's claim of retaliation."

11. The jury awarded plaintiff $3,222 in medical expenses and $60,000 for pain, suffering and mental anguish.

12. In a hearing after the trial the Court found, as a matter of law, that the evidence did not warrant imposition of punitive damages.

ARGUMENT

I. DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF WHETHER IT IS LIABLE TO PLAINTIFF FOR A SEXUALLY HOSTILE WORK ENVIRONMENT

In a hostile work environment case, the plaintiff must prove that the employer knew or should have known of the harassment in question and failed to take prompt remedial actions. Hirase-Doi v. U.S. West Communications, Inc., 61 F.3d 777 (10 Cir., 1995); Nash v. Electrospace System, Inc., 9 F.3d 401, 404 (5 Cir., 1993); Henson v. City of Dundee, 692 F.2d

897, 905 (11 Cir. 1982). The Fourth Circuit has also so held by analogy, in the case of Dennis v. County of Fairfax, 55 F.3d 151, 155 (4 Cir., 1995) (applying the notice liability scheme of a sexual harassment claim to a racial discrimination claim, the Court held that an employer was not liable after prompt remedial action by an employer redressing the alleged racial harassment.) Constructive knowledge of the presence of harassment is not imparted by mere allegations or office rumors. Harrison v. Eddy Potash, Inc., 112 F.3d 1437 (10 Cir. 1997.) The employer must have something more, either actual or constructive knowledge of specific harassing actions. Barrett v. Omaha National Bank, 726 F.2d 424 (8 Cir., 1984).

In the instant case, the evidence is clear that defendant had no actual or constructive notice of any alleged harassment by Kelly until August, 1996, at which time plaintiff gave false notice that Kelley had fondled her. The evidence is likewise uncontroverted that upon learning about the alleged fondling, defendant took appropriate remedial action by separating Kelley from plaintiff and ordering him not to have any contact with her again. This is a reasonable response since plaintiff had reported only a fondling incident. Plaintiff herself acknowledges that this was effective in that she did not have to have contact with Kelley after that.

Based upon this uncontroverted evidence, defendant is entitled to judgment as a matter of law on the issue of sexually hostile work environment.

II. THE JURY HAVING FOUND THAT DEFENDANT WAS NOT LIABLE FOR QUID PRO QUO SEXUAL HARASSMENT, DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE ISSUE OF RETALIATION.

The Verdict Form returned by the jury in this case is

inconsistent and does not comport with the instructions given to the jury. The Verdict finds in favor of defendant on the issue of whether quid pro quo harassment occurred.

The jury was specifically instructed that the three elements of quid pro quo harassment were:

> "First, that she was subjected to unwelcome sexual harassment; Second, that the harassment complained of was based on her sex; and Third, that her reaction to the harassment resulted in her discharge."

The jury was further instructed:

> "If you find that Ms. Watkins has demonstrated that her acceptance or rejection of Mr. Kelley's sexual advances was the real reason behind the decision to terminate her, then you must find for Ms. Watkins on this claim"

The jury was likewise instructed that the three elements of sexually hostile work environment harassment were:

> "First, that she was subjected to unwelcome sexual harassment; Second, that the harassment complained of was based on her sex; and Third, that the harassment was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment."

It is obvious that in finding defendant liable for sexually hostile work environment, the jury determined that plaintiff was subjected to unwelcome sexual harassment and that it was based on her sex. It is also apparent that single element which the jury found to be lacking in plaintiff's evidence concerning quid pro quo harassment was the third element, i.e., "that her reaction to the harassment resulted in her discharge," or that plaintiff had failed to prove that "her acceptance or rejection of Mr. Kelley's sexual advances was the real reason behind the decision to

terminate her" as required by the jury instruction.

If the jury had [not] considered only these two claims, then the veredict could be reconciled. However, the jury was instructed to consider a claim for retaliation, which would be proven if the evidence showed that "she complained of being sexually harassed;...that Professional Security fired her; and...that a causal connection existed between her complaining about Mr. Kelley's conduct and her termination."

The jury found for plaintiff on this Court, and therefore must have found that "a causal connection existed between [plaintiff's] complaining about Mr. Kelley's conduct and her termination." This the jury could not logically have found, having already determined that plaintiff had failed to prove in her quid pro quo claim that her acceptance or rejection of Mr. Kelley's sexual advances was the real rason behind the decision to terminate her.

In other words, the jury having found that plaintiff did not suffer and adverse job action because of the harassment in the quid pro quo claim then turned around and found for plaintiff on the claim of retaliation, finding of necessity that her reporting of the harassment did, indeed, result in an adverse job action--her discharge.

Defendant maintains that the jury should not have been instructed in retaliation, since the suffering of a job action was an essential element of the quid pro quo claim. Based on the duplication of elements, and the indication that the jury found no retaliation had occurred as part of the quid pro quo claim, the Court should vacate the finding of the jury concerning retaliation and award judgment as a matter of law to the defendant on said issue.

In the alternative, the Court should consider the divergence between the verdicts returned by the jury as

irreconcilable and award a new trial in this matter.

However, in the interest of judicial economy, and based on the uncontroverted evidence admitted at trial, the Court may rightfully determine that defendant is entitled to summary judgment as a matter of law.

WHEREFORE, defendant prays for an entry of an Order awarding it judgment as a matter of law or, in the alternative, awarding defendant a new trial in this matter.

Professional Security Bureau Ltd.
By Counsel

ARTHUR, PEARSON & MARTIN, LTD.
101 West Broad Street, Suite 500
Falls Church, VA 22046

s

Paul R. Pearson
Counsel for Defendant

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MARYLAND

ANGEL WATKINS	*	
Plaintiff	*	CASE NO. L97-520
PROFESSIONAL SECURITY BUREAU, LTD.	*	
Defendant	*	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL

Plaintiff, Angel Wakins, by her attorneys, A. Dwight Pettit and the Law Office of A. Dwight Pettit, hereby files Plaintiff's Opposition to Defendant's Motion for Judgment as a Matter of Law, or, in the Alternative, for a New Trial.

I BRIEF HISTORY

On September 3, 1998 the jury in this case returned a verdict in favor of Ms. Watkins. Specifically, the jury found that PSB was liable for creating a hostile environment and for retaliation in a sexual harassment case. The jury did not find quid pro quo sexual harassment. The jury awarded damages of $3,222.00 in medical and $60,000.00 in mental anguish, pain and suffering. This Court entered an Order of Judgment on September 4, 1998 consistent with the Jury's verdict. On September 10, 1998 the PSB's filed a motion that is the subject of this opposition.

The following is a summary of the relevant evidence supporting the jury's verdict. Angel Watkins worked as a security officer with the PSB from July 1995 until September 1996. Professional Security Bureau, Ltd., incorporated in New York, does business in the State of Maryland and has approximately three thousand employees. Mr. Edward Kelley was hired as the branch manager for PSB's regional area in 1995 encompassing New Jersey, New York, Pennsylvania and Maryland. He hird and supervised Mr. Don Nicola, Angel Watkins' direct supervisor and the company's chief investigator of her sexual harassment complaint. He also hired and supervised Ms. Hazel Dowling one of the supervisors to whom Angel Watkins complained of sexual harassment. Mr. Ed Kelley had the authority to hire, fire, demote and promote Don Nicola, Hazel Dowling and Angel Watkins. Although PSB has a company handbook, which includes a policy on sexual harassment, it was not distributed to employees until 1997, after the Angel Watkins incident.

While employed by the PSB, Angel Watkins was diligent, professional and performed her job satisfactorily until the May 1996 rape incident. She was never called in for disciplinary action in 1995 and she worked through her pregnancy in January 1996. She returned to work only after taking one week off after her baby's delivery. Angel Watkins worked as a security officer during her employment by PSB and she was supervised by PSB employee, servant and agent, Ed Kelly. Professional Security Bureau was found liable as an employer for its employee Edward Kelley's reprehensible conduct regarding Angel Watkins claims of sexual harassment.

Throughout Watkins employment, Professional Security Bureau, Ltd. agent, servant and employee Edward Kelley, Angel Watkins' supervisor, engaged in unwelcome conduct of a sexual nature culminating in the alleged rape incident of May 1996. This

unwelcome, non-consensual conduct created a hostile work environment. Both the verbal and physical conduct was heinous and reprehensible. IT changed the conditions of Plaintiff Watkins employment. Special examples of the sexual conduct are detailed in the Police Report 96-262-1890 filed with the Baltimore County Police Department, in Angel Watkins correspondence, in her Complaint, and in her complaint filed with both the Maryland State Commission on Human Relations and the complaint filed with the EEOC. Example of physical acts of harassment are touching Angel Watkins breast in May 1996 and forcing Angel Watkins to have sexual intercourse against her will in May 1996.

Angel Watkins made an account of the event and filed a complaint with the Baltimore County Police Department but they and the States Attorney's office were unable to prosecute because the complaint was filed four months after the incident. Angel Watkins told Don Nicola about the breast touching but not the forced sexual intercourse in August 1996. Don Nicola told Angel Watkins that the alleged breast touching incident would be investigated. On September 16, 1998, approximately one month after reporting the May alleged breast touching incident, Ed Kelly or Don Nicola terminated Angel Watkins from her employment.

In August of 1996 when Angel Watkins advised Don Nicola of the May 1996 breast touching, Nicola promised that he would investigate her complaint. PSB employee, servant, and agent Ed Kelley is Don Nicola's supervisor. Angel Watkins stated that she did not report the forced sexual intercourse sooenr because she was afraid of reprisal, retaliation, and embarassment. Angel Watkins stated in her complaint that had she not told anyone about the May 1996 breast touching she would not have been terminated.

In its motion, PSB denied that it had prior knowledge of any incidents of sexual harassment. At trial, Hazel Dowling, a

PSB supervisor, stated that she talked with Ms. Kia Odom about a sexual harassment complaint but was vague about the date of Ms. Odom's complaint. At trial, PSB denied any knowledge that its employee, Ed Kelly sexually assaulted Angel Watkins. Testimony at trial revealed that Angel Watkins reported Mr. Kelly's breast fondling and fondling of her private area, to Hazel Dowling (which occurred May 1996) and Mr. Don Nicola in August 1996. On May 23, 1996, Ms. Watkins testified that she received a letter to report to PSB's main office on York Road in Luthersville on May 24, 1996. She did and Mr. Kelly told her that he had a lot of complaints about her. He launched into a tirade of verbal abuse. The abuse escalated when Ed Helly harassed and raped Angel Watkins. Angel Watkins did not immediately report the incident because she was embarrassed and feared reprisal and retaliation. Angel Watkins testified that September 16, 1996 when she was called to a meeting with Ed Kelly and Don Nicola, Mr. Kelly started again into a verbal tirade. Ms. Watkins stated that Mr. Kelly was not going to take avantage of her as he had previously done.

II STANDARD OF REVIEW FOR SUMMARY JUDGEMENT

The Defendant's motion asks this Court to overturn the jury's verdict and sweep aside their many hours of careful and thoughtful deliberation. Summary judgment is only proper where the moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Miller v. Federal Deposit Ins. Corp., 906 F.2d 972 (4th Cir. 1990). Normally, the court's function at summary judgment is not "to weight the evidence and determine the truth of the matter, but to determine whether here is a genuine issue for trial. Anderson v. Liberty Lobby, Inc.., 477 U.S. 242, 252 (1986). The court must therefore, draw any possible inference from the

underlying facts in a light most favorable to the party opposing the motion. Matushita Elec Industries Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986).

Defendants have not met their burden. At trial, the jury was presented with three days of testimony from witnesses on both side.

First, the jury heard contradictory evidence regarding PSB's notice of sexual harassment and failure to take prompt remedial actions from Hazel Dowling, Don Nicola, Charles Fisher and Angel Watkins. Second, the jury found that there was also a genuine dispute as to whether or not Angel Watkins engaged in misconduct, which would have provided PSB with a non discriminatory reason for her dismissal.

Now, PSB asserts that the jury instructions were incorrect in certain respects and moves for a new trial.

Now, PSB raises the issue of an inconsistent verdict stating that since it was not found liable for quid pro quo sexual harassment, it is entitled to judgment as a matter of law on the issue of retailiation.

The jury weighed the evidence and determined witnesses' credibility and properly weighed the witnesses' testimony. The instructions were correct and the findings of the jury are not inconsistent. The jury's verdict should be upheld.

III ARGUMENT

A. The Defendant is not entitled to judgment as a matter of law on the issue of whether it is liable to the plaintiff for sexually hostile work environment.

1. Notice to the employer and remedial action

Although this is purportedly a motion for summary judgment the Defendant gave no standard of review and no cases supporting the motion for summary judgment. It the most recent

sexual harassment hostile work environment case, the Supreme Court changed the notice standard. Further, for PSB to argue that it took proper remedial action as to Ed Kelly is illogical. Firstly, they had Don Nicola, a PSB employee who was hired and supervised by Ed Kelly, investigate Angel Watkins claim of sexual harassment. In essence, Ed Kelly was investigating a claim of sexual harassment against himself. This is analogous to the fox who stole and ate the chickens investigating the raid of the chicken coop.

Although PSB claimed that they fired Ed Kelly within a month of Angel Watkins reporting the sexual harassment, there was no evidence that Ed Kelly was suspended with pay or removed from his position pending the outcome of the spurious investigation by his supervisor, Don Nicola. To add further insult to injury, on September 16th when Angel Watkins was fired, she was confronted again by Ed Kelly the main she claimed had raped and harassed her. This is not "prompt remedial action" referred to [in] Defendant's memorandum on p. 4.

Evidence at trial revealed the other employee Kia Odom had complained of harassment by Ed Kelly. There was contradictory evidence on the issue of sexual harassment, hostile environment, employer notice and remedial action presented at trial and the jury found that PSB had a hostile work environment creates by its employee agent and servant, Ed Kelly. Therefore, there can be no question that Ms. Watkins presented enough evidence from which a reasonable jury could have found that she was subject to a hostile environment.

2. <u>There was a genuine dispoute as to employee misconduct</u>

PSB contends that its reason for fiiring Ms. Watkins was that she engaged in employee misconduct. This misconduct was so severe [that] the misconduct caused PSB to lose two accounts.

Specific instances of misconduct included:

(1) Coming to work with her children

(2) Leaving her post unattended

(3) Coming to work without wearing her uniform.

Ms. Watkins presented testimony that:

(1) She was given permission by her employe[r] to bring her children on the job.

(2) She left her post unattended to assist senior citizens entering and leaving the T.V. room, building which is part of her job requirements.

(3) Angel Watkins presented evidence at trial that she was only given one uniform and that it had to be laundered causing her to come to work out of uniform.

(4) Angel Watkins presented evidence at trial that she had no negative documentation in her personnel file. Ms. Watkins was able to demonstrate at trial and the jury found that there was a genuine dispute as to whether or not her termination resulted form her misconduct on the job or PSB was retaliating from her reporting of the sexual harassment claim. Therefore, becuase there were genuine issues as to why Angel Watkins was terminated the Defendant PSB was not entitled to summary judgment as a matter of law.

3 The denial of the quid pro quo claim and [the] prevailing on the retailation claim are not inconsistent

PSB['s] contention that Angel Watkins should not prevail on her retaliation claim because she did not previl on her "quid pro quo" claim is illogical. Under PSB's reasoning, a female employee could not have quid pro quo claim of sexual harassment and a claim of retaliation. In other word[s,] a wom[a]n who complained of unwelcome sexual conduct from her boss and who also claimed that she was fired for reporting that

claim, would be precluded from recovering from both wrongs. In their memorandum on page 6 they have confused the concept of Angel Watkins sexual advances and subsequent firing. The jury found that Ms. Watkins failed to prove her "quid pro quo" claim. This does not preclude the jury from finding that she was fired, not because she rejected or accepted Mr. Kelley's sexual advances but because she reported those advances. For purposes of this Motion the court must view all of the evidence in the light most favorable to Ms. Watkins, resolve all reasonable inferences in her favor, and it should not substitute its judgment for that of this jury as to the credibility of the witnesses. Matushita 475 U.S. 587-88.

In light of PSB's heavy burden and failure to meet same, the jury's verdict should be upheld.

Respectfully submitted,

/s/

A. DWIGHT PETTIT
3500 Hilton Road
Baltimore, Maryland 21215
(410) 542-5400

ATTORNEY FOR PLAINTIFF

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGEL WATKINS :

Plaintiff, :

v. : Civil No. L-97-520
(Judge Maletz)

PROFESSIONAL SECURITY
BUREAU, LTD. :

Defendant.

::::::::::::::::

ORDER

For the reasons set forth in the accompanying memorandum, it is this 22nd day of October, 1998, by the United States District Court for the District of Maryland,

ORDERED:

1) that Professional Security's motion for judgment as a matter of law is granted;

2) that Professional Security's alternative motion for a new trial is conditionally granted;

3) that Watkin's motion for attorneys' fees is denied; and

4) that the clerk send copies of this memorandum and order to the parties.

/s/

Herbert N. Maletz
Senior Judge

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGEL WATKINS :

Plaintiff, :

v. : Civil No. L-97-520
(Judge Maletz)

PROFESSIONAL SECURITY
BUREAU, LTD. :

Defendant. :

::::::::::::::::

MEMORANDUM

Pending in this case is the motion of defendant, Professional Security Bureau, Ltd., for judgment as a matter of law or, in the alternative, for a new trial, and the motion of plaintiff, Angel Watkins, for attorneys' fees.

I.

Watkins brougth this action against Professional Security, her former employer, alleging sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.[1] She claimed that she was the victim of both "quid pro quo" sexual harassment and a sexually hostile work environment. She also claimed that she was fired in retaliation for having

---

Professional Security provides security guards for various companies, and Watkins was one of its guards

complained of being sexually harassed. The action went to trial before a jury. Professional Security made a motion for judgment as a matter of law at the close of Watkins's case and at the close of all the evidence. Both motions were denied. The court declined to submit the issue of punitive damages to the jury. The jury returned a verdict in favor of Watkins on the secually hostile work environment and retaliation claims, and awarded damages in the amount of $3,222 for medical expenses and $60,000 for pain, suffering and mental anguish. The jury found in favor of Professional Security on the "quid pro quo" sexual harassment claim. After the verdict was returned, the court entered judgment as a matter of law against Watkins with respect to the issue of punitive damages. The court also entered judgment on the jury's verdict.

II.

Judgment as a matter of law following a jury verdict is appropriate "'when without weighing the credibility of the evidence, there can be but one reasonable conclusion as to the proper judgment.'" Singer v. Dungan, 45 F.3d 823, 826 (4th Cir. 1995); Fed. R. Civ. P. 50(a). The evidence is viewed in the light most favorable to the nonmovant. See Singer, 45 F.3d at 826.

A.

The court first finds that Watkins presented sufficient evidence for a reasonable jury to find that she was the victim of a sexually hostile work environment. Watkins testified that in May 1996 one of her supervisors, Edward Kelley, grabbed her breasts, put his hand in her pants, and forced her top have sexual intercourse with him. This evidence is sufficient to sustain the jury's finding that 1) the conduct in question was unwelcome, 2) it was based on Watkins's sex, and 3) it was sufficiently severe or pervasive to alter Watkins's conditions of employment and to create an abusive work environment. See Swentek v. USAIR,

Inc., 830 F.2d 552, 557-58 (4th Cir. 1987).

An employer is liable to a victimized employee for the sexually harassing conduct of a supervisor. The employer, however, has an affirmative defense. "The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm otherwise." Burlington Indus., Inc. V. Ellerth, 118 S.Ct. 2257, 2270 (1998). The court finds that Professional Security has not only presented sufficient evidence to establish the affirmative defense, but additionally that there is insufficient evidence for permitting any other finding. The evidence supporting Professional Security's affirmative defense is so overwhelming and one-sided that the court cannot uphold the jury's rejection of that defense. See, e.g., Thornhill v. Donnkenny, Inc., 823 F.2d 782, 786 (4th Cir. 1987).

It is undisputed that Watkins waited until August, 1996, nearly four months, before she complained to anyone at Professional Security about the harassment, at which time she told one of her site supervisors, Hazel Dowling, only that Kelley had 'grabbed' or 'touched' her breasts. She did not inform anyone at Professional Security, at any time, that she was the victim of forced sexual intercourse. Cf. Burlington, 118 S. Ct. at 2270 ("[W]hile proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense.").

It also is undisputed (1) that Professional Security had a policy against sexual harassment, (2) that it promptly investigated

Watkins's complaint, (3) that it took remedial action by directing Kelley not to have further contact with Watkins, and (4) that Kelley did not harass Watkins again.

In light of the undisputed evidence, the only reasonable conclusion that the jury could reach in this case is that Professional Security exercised reasonable care to prevent and correct promptly the sexually harassing behavior and that Watkins, by not complaining to anyone at Professional Security about the harassment until August 1996, unreasonably failed to take advantage of any preventive or corrective opportunities provided by Professional Security or to avoid harm otherwise. Hence, Professional Security must prevail against Watkins on the affirmative defense to the claim of sexually hostile work environment as a matter of law.

B.

The court also finds that Professional Security is entitled to judgment as a matter of law with respect to the retaliation claim. To establish a prima facie case of retaliation, Watkins must prove that "(1) [s]he engaged in protected activity; (2) that h[er] employer took adverse employment action against h[er]; and (3) that there was a sufficient casual connection between the protected activity and the adverse employment action." See McNairn v. Sullivan, 929 F.2d 974, 980 (4th Cir. 1991). The court finds that she has satisfied the first two of the three elements of a prima facie case. She engaged in protected activity by complaining to her supervisors about the harassment and Professional Security took adverse employment action against her by terminating her employment. However, viewing the evidence in the light most favorable to Watkins, the court finds that she has not presented sufficient evidence from which a reasonable jury might infer the existence of a casual connection between her complaining about the harassing conduct and the termination of

her employment by Professional Security.

The fact that Watkins complained of harassment in August 1996, and then, within a short period of time, i.e., in September 1996, was terminated, on its own, is insufficient to support the jury's finding. The evidence showed that Watkins was terminated because of her unsatisfactory job performance. It was undisputed that she received numerous negative performance reviewed within a period of some four months in 1996. In addition, Don Nicola, Watkins's immediate supervisor, testified without contradiction that she had repeatedly come to work without wearing her uniform. He further testified that she had left her post unattended, causing Professional Security to lose the account. The evidence was uncontradicted that Professional Security investigated this incident and that Watkins was discharged on September 16, 1996 pursuant to the personnel policy of Professional Security, which required that her employment be terminated.

Even if the court assumes that Watkins presented sufficient evidence of a causal connection, Professional Security has articulated legitimate, nonretaliatory reasons for her termination and Watkins has failed to offer sufficient evidence that the reasons were pretexual. Concededly, Watkins offered some evidence on this score. Her evidence, however, consisted essentially of offering her own opinion that her job performance had been satisfactory. She testified that she had been given only one uniform, which she had needed to launder, and that she had left her post unattended to assist elderly residents. In light of all the evidence, including uncontradicted testimony that Professional Security investigated the circumstances that necessitated Watkins leaving her post unattended, this evidence is insufficient to discredit, in the mind of a reasonable juror, Professional

Security's legitimate, nonretaliatory explanation for her termination. Accordingly, Watkins has failed, as a matter of law, to meet her ultimate burden of showing that Professional Security had a retaliatory motive in discharging her.

III.

Professional Security has moved, in the alternative, for a new trial. The court assumes, in ruling on the motion for a new trial, that the appellate court will reverse its grant of judgment as a matter of law. See Rule 50(c)(1).

On a motion for new trial, the court should set aside the verdict if it finds that it is against the weight of the evidence, is based on false evidence, or will result in a miscarriage of justice. Poynter v. Ratcliff, 874 F.2d 219, 223 (4th Cir. 1989). The court may weigh the evidence and consider credibility, and the court has wide discretion in making its determination. Hamilton v. 1st Source Bank, 895 F.2d 159, 162 (4th Cir. 1990).

The standard for granting a new trial on the ground that the verdict is against the weight of the evidence is less onerous than the standard applicable for judgment as a matter of law. For this reason, the jury's verdict in favor of Watkins with respect to both of her claims is necessarily against the weight of the evidence, and the court so finds. Accordingly, the court conditionally grants Professional Security's alternative motion for a new trial.

IV.

For the reasons set forth herin, Watkins is not the prevailing party in this case. Accordingly, she is not entitled to an award of attorneys' fees.

V.

For the foregoing reasons, Professional Security's motion for judgment as a matter of law with respect to the claims of sexually hostile work environment and retaliation is granted, and

judgment is entered in favor of Professional Security. Professional Security's motion for a new trial is conditionally grnated. Watkins's motion for attorneys' fees is denied.

Dated: October 22, 1998

/s/

Herbert N. Maletz
Senior Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ANGEL WATKINS,
Plaintiff-Appellant,
v.
PROFESSIONAL SECURITY BUREAU, LIMITED,
Defendant-Appellee.

No. 98-2555

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Herbert N. Maletz, Senior Judge, sitting by designation.
(CA-97-520-L)

Argued: September 23, 1999

Decided: November 15, 1999

Before WILKINS, NIEMEYER, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Alvin Dwight Pettit, Baltimore, Maryland, for Appellant. Brian William McAlindin, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, L.L.P., Newark, New Jersey, for Appellee. **ON BRIEF:** C. William Michaels, Baltimore, Maryland, for Appellant.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Angel Watkins appeals an order of the district court granting judgment as a matter of law, or in the alternative a new trial, to Professional Security Bureau, Limited (PSB) on Watkins' claims of sexual harassment and retaliation. *See* Fed. R. Civ. P. 50(b)-(c), 59. Because we conclude that no rational jury could have failed to find that PSB established an affirmative defense to liability on the harassment claim, and because Watkins failed as a matter of law to carry her burden on the retaliation claim, we affirm.

I.

PSB provides security services on contract to businesses in several states.[1] In August 1995, Watkins was hired by the Baltimore, Maryland branch office of PSB as a security guard. At that time, the Baltimore office was overseen by Charles Fisher, who was vice president of operations for PSB. Edward Kelley served as the branch manager and reported to Fisher. Don Nicola supervised branch employees and reported to Kelley.

[1]As explained in more detail below, in ruling on a motion for judgment as a matter of law, the district court must view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in her favor without weighing the evidence or assessing the witnesses' credibility, and we must do the same on appeal. *See Townley v. Norfolk & W. Ry.*, 887 F.2d 498, 499 (4th Cir. 1989). In ruling on a motion for a new trial, however, the district court may consider the credibility of the witnesses and weigh the evidence, and our review is for abuse of discretion. *See Chesapeake Paper Prods. Co. v. Stone & Webster Eng'g Corp.*, 51 F.3d 1229, 1237 (4th Cir. 1995). In order to accommodate these differing standards, the facts set forth in the text are those viewed in the light most favorable to Watkins, and relevant conflicts in the evidence are identified in the accompanying footnotes.

BEST AVAIL

Watkins testified, and we assume it to be true for purposes of this opinion, that Kelley raped her in the conference room at the Baltimore office on May 24, 1996. Watkins did not report the attack to authorities at the time it occurred, but did notify her doctor.[2] In July and again in mid-August, Watkins told Site Supervisor Hazel Dowling that Kelley had fondled Watkins' breasts and put his hands down her pants as she was changing clothes in the uniform room.[3] Although Watkins indicated that she did not wish to pursue the matter, Dowling promptly notified Nicola of Watkins' allegation. Nicola then interviewed Watkins, who repeated the same allegation but told Nicola that she did not wish to press the issue.[4] Nicola then informed Fisher of the situation. Fisher spoke to Dowling and requested a meeting with Watkins, which she refused on the basis that she did not want

[2]Watkins' doctor testified that her records indicated no report of the rape by Watkins until October 1996. Additionally, although Watkins maintained that she spoke with the police and personnel at the Equal Employment Opportunity Commission (EEOC) on several occasions before formally reporting the rape in mid-September, the record contains no evidence of such contacts.

[3]Dowling testified that her only contact with Watkins occurred between August 9 and September 5—during which time Watkins worked at the site supervised by Dowling—and that during that period Watkins told Dowling that Kelley had fondled her breasts and put his hands down her pants.

[4]As noted above, Watkins maintains that the attack occurred on May 24. Nicola testified, however, that Watkins told him that the incident occurred on the day she was rehired by Fisher after having been terminated by Nicola for poor job performance. According to Nicola, he terminated Watkins in mid-June 1996, and the termination was rescinded on or about the first of July. At that time, Kelley was on leave recuperating from injuries sustained in an automobile accident.

Watkins claims that she was not terminated during the summer of 1996, but rather was "on call" for a brief period due to lack of work. J.A. 256. However, the record contains a termination report filed by Nicola which indicates that Nicola terminated Watkins for poor performance on July 12. The line for the branch manager's signature bears the notation "recinded [sic]" and the initials "CF". J.A. 502. Additionally, Watkins testified to a "conversation" with Fisher in July 1996 during which Fisher told her that she "needed to thank Mr. Kelley for [her] job because he [Fisher] was going to fire [her]." J.A. 256.

ABLE COPY

to follow up on her allegation. Fisher also spoke to Kelley, who denied the accusation made by Watkins. Nevertheless, Fisher instructed Kelley to have no contact with Watkins. Because he had already decided to terminate Kelley for other reasons, and because Kelley was working only part-time and no longer exercised supervisory authority over Watkins, Fisher did not take any further action. Watkins never informed PSB that she was dissatisfied with this result.

Also during August, Watkins was working the night shift at Benet House, a retirement home.[5] During the course of her shift she locked her keys in the day room. Watkins then left the building and went down the street to the handyman's house and asked him to come open the day room door for her. When he refused to do so, Watkins called the manager of the facility, who came and opened the door. The manager subsequently complained to Nicola about Watkins' conduct and ultimately canceled the account.

On September 16, Nicola summoned Watkins to the PSB office, where she met with Nicola, Kelley, and another security officer. Kelley sat behind a desk, while Watkins and Nicola sat in chairs on the other side; the other security officer remained standing. Watkins testified that Kelley told her he had saved her job once, but that she was "still screwing up." J.A. 259. When Kelley further stated that Watkins "owe[d] him a favor," Watkins "stood up, and ... said I don't owe you no favor. You already took advantage of me." *Id.* Watkins then said that she had spoken to the EEOC and the police and intended to press charges against Kelley. In response, Kelley informed Watkins that she was fired.[6]

---

[5]Although Watkins testified that the incident at the Benet House occurred during August, Nicola testified that the date was September 15. That is also the date noted on the employee termination report filled out by Nicola.

[6]Nicola's account of the termination is diametrically opposed to Watkins' account. According to Nicola, no confrontation occurred between Kelley and Watkins. Nicola testified that he summoned Watkins to the office and asked her about the incident at Benet House. Watkins acknowledged that she had left her post, at which point Nicola terminated her. According to Nicola, although Kelley was in the PSB office at the time of the meeting, he was not in the conference room during the meeting and had no input into the decision to fire Watkins.

Throughout Watkins' tenure at PSB, the company had a policy against sexual harassment. The basic components of the policy were set forth in a memorandum that was posted on the wall of the conference room where all training was conducted and where employees collected their paychecks. The memorandum encouraged employees who had been harassed to contact PSB's director of human resources and included two phone numbers, one of them toll-free, for such reports. Further, the policy was outlined in detail in the employee handbook, which was given to each employee upon hiring; an additional copy was placed at each security post. And, all employees received training about the policy as part of the orientation process. Watkins denied being given a copy of the employee handbook and denied receiving any orientation or training whatsoever before beginning her employment.[7] Shortly after she was terminated, Watkins instituted this lawsuit alleging quid pro quo and hostile environment sexual harassment based on the rape by Kelley and retaliatory discharge based on her termination after she informed Kelley that she had contacted the EEOC and the police. *See* 42 U.S.C.A. §§ 2000e-2(a)(1), 2000e-3(a) (West 1994). A jury found in favor of Watkins on the hostile environment and retaliation claims and awarded damages of approximately $63,000; the jury ruled in favor of PSB on Watkins' quid pro quo claim. The district court refused to submit the issue of punitive damages to the jury, concluding that PSB's conduct was not sufficiently egregious to justify an award of punitive damages. Subsequently, the district court granted PSB's motion for judgment as a

[7]Documentary evidence in the record conflicts with Watkins' testimony that she received no training prior to beginning employment with PSB. To begin, the record contains a document signed by Watkins entitled "STANDARDS FOR PROFESSIONAL SECURITY BUREAU EMPLOYEE." J.A. 570. That document provides that "[a]ll applicants must complete the PSB orientation program and pass the examination at the end of the program to be considered for employment." *Id.* Watkins' signature on this document indicated that she understood and agreed to comply with this requirement. The record also contains a document entitled "EXAMINATION 'A', BASIC 8-HOUR PRE-ASSIGNMENT SECURITY OFFICER TRAINING COURSE." J.A. 535. This item, which also was signed by Watkins, consists of a cover sheet and a 50-question test concerning the provision of security officer services. Answers to the questions are marked on the examination.

matter of law or in the alternative for a new trial on the hostile environment and retaliation claims.

II.

We review the decision of the district court to grant judgment as a matter of law de novo. *See Konkel v. Bob Evans Farms Inc.*, 165 F.3d 275, 279 (4th Cir.), *cert. denied*, 68 U.S.L.W. 3106 (U.S. Oct. 4, 1999) (No. 99-180). In so doing, we must view the evidence in the light most favorable to Watkins and draw all reasonable inferences in her favor without weighing the evidence or assessing the witnesses' credibility. *See Sales v. Grant*, 158 F.3d 768, 775 (4th Cir. 1998). "The question is whether a jury, viewing the evidence in the light most favorable to [Watkins], could have properly reached the conclusion reached by this jury." *Benesh v. Amphenol Corp. (In re Wildewood Litigation)*, 52 F.3d 499, 502 (4th Cir. 1995). We may affirm if a reasonable jury could only rule in favor of PSB; if reasonable minds could differ, we must reverse. *See Sales*, 158 F.3d at 775; *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (explaining that judgment as a matter of law is proper if "there can be but one reasonable conclusion as to the verdict"); *Buntin v. Breathitt County Bd. of Educ.*, 134 F.3d 796, 799-800 (6th Cir. 1998) (observing that judgment as a matter of law on an affirmative defense is appropriate only if the defense is so clearly established "that no rational jury could have found to the contrary" (internal quotation marks omitted)).[6]

A.

Watkins first contends that the district court erred in granting judgment as a matter of law to PSB on her hostile environment claim. In

[6]In contrast, we review a motion for new trial for abuse of discretion. *See Chesapeake Paper Prods. Co. v. Stone & Webster Eng'g Corp.*, 51 F.3d 1229, 1237 (4th Cir. 1995). In ruling on a motion for new trial, the district court "may weigh the evidence and consider the credibility of the witnesses." *Id.* (internal quotation marks omitted). The district court must grant the motion if it finds that "the verdict is against the clear weight of the evidence, is based on false evidence or will result in a miscarriage of justice." *Id.* (internal quotation marks omitted).

order to establish the existence of a hostile environment, a plaintiff must demonstrate that "(1) the subject conduct was unwelcome; (2) it was based on the sex of the plaintiff; (3) it was sufficiently severe or pervasive to alter the plaintiff's conditions of employment and to create an abusive work environment; and (4) it was imputable on some factual basis to the employer." *Spicer v. Virginia Dep't of Corrections*, 66 F.3d 705, 709-10 (4th Cir. 1995) (en banc). There can be little doubt that Watkins' testimony that she was raped by Kelley, which we assume to be true for purposes of this opinion, was sufficient to satisfy the first three elements of a hostile environment claim. *See Tomka v. Seiler Corp.*, 66 F.3d 1295, 1305 (2d Cir. 1995) (explaining that "even a single incident of sexual assault sufficiently alters the conditions of the victim's employment and clearly creates an abusive work environment"). Rather, the dispute here centers on whether a reasonable jury could have imputed liability for Kelley's conduct to PSB.

The Supreme Court recently articulated standards for imputing liability to employers in sexual harassment cases. *See Burlington Indus., Inc. v. Ellerth*, 118 S. Ct. 2257, 2265-70 (1998); *see also Faragher v. City of Boca Raton*, 118 S. Ct. 2275, 2286-94 (1998). The Court first distinguished between two general types of sexual harassment cases: those in which threats of adverse action in retaliation for denial of sexual favors are carried out in the form of a tangible employment action, and those in which no tangible employment action is taken. *See Burlington Indus.*, 118 S. Ct. at 2264-65. Looking to principles of agency law to inform principles of vicarious liability in Title VII actions, the Court determined that an employer is subject to liability "for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee." *Id.* at 2270. When the supervisor has taken no tangible employment action against the victim of harassment, however, the employer may raise an affirmative defense consisting of two elements: "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Id.*

Watkins first argues that the affirmative defense to liability is not available to PSB because her termination constituted a tangible

BLE COPY

employment action. While Watkins is correct that termination is the quintessential "tangible employment action," *see Laughlin v. Metropolitan Washington Airports Auth.*, 149 F.3d 253, 258 (4th Cir. 1998), there simply is no evidence in the record establishing that Watkins' termination "resulted from a refusal to submit to a supervisor's sexual demands," *Burlington Indus.*, 118 S. Ct. at 2265. Watkins herself acknowledges this fact by arguing that she was terminated in retaliation for threatening to report Kelley's conduct to the police and the EEOC. Accordingly, we hold that PSB was entitled to raise the affirmative defense outlined in *Burlington Industries*.

Turning to the elements of that defense, we conclude that no reasonable jury could fail to determine that PSB acted reasonably "to prevent and correct promptly any sexually harassing behavior." *Id.* at 2270. PSB offered essentially uncontradicted evidence that it had in place a comprehensive policy against sexual harassment.[6] While the existence of such a policy will not satisfy the first element of the defense in every case,

> where, as here, there is no evidence that an employer adopted or administered an anti-harassment policy in bad faith or that the policy was otherwise defective or dysfunctional, [its] existence ... militates strongly in favor of a conclusion that the employer exercised reasonable care to prevent and promptly correct sexual harassment.

Brown v. Perry, 184 F.3d 388, 396 (4th Cir. 1999) (internal quotation marks omitted). Additionally, the policy provided that reports of sexual harassment were to be made to the human resources department, so that Watkins was not in the position of having to report Kelley's conduct to someone in his chain of command. *See Shaw v. AutoZone, Inc.*, 180 F.3d 806, 811-12 (7th Cir. 1999) (holding that employer had satisfied first element of affirmative defense as a matter of law based

[6]Watkins attempts to create an issue of fact concerning the existence of such a policy by contorting a brief passage from Fisher's deposition in which he demonstrated a failure to understand a question from Watkins' counsel. Despite Watkins' strenuous efforts, we rule that no reasonable fact finder could conclude, based on that passage, that PSB did not have an anti-harassment policy during Watkins' employment with PSB.

on existence of anti-harassment policy that, *inter alia*, allowed victims of harassment to circumvent the chain of command).

Moreover, there can be no dispute that PSB acted promptly upon learning of Watkins' allegations of sexual harassment. Immediately upon receiving Dowling's report in August,[10] Nicola went to Watkins and spoke with her personally; he then relayed the information he had received to Fisher. Fisher, in turn, conducted an investigation that involved speaking with Kelley and attempting to arrange a meeting with Watkins, which Watkins refused. This evidence further indicates that PSB took reasonable care to prevent and promptly correct incidents of sexual harassment.[11] *See Brown*, 184 F.3d at 396 (noting, in determining that first prong of affirmative defense was established as a matter of law, that "the existence of a viable anti-harassment policy ... [was] accompanied by other undisputed evidence of the employer's reasonable care," including prompt and supportive response to complaint of harassment even though the harassment was not reported under the employer's anti-harassment policy).

Watkins contends that PSB cannot satisfy its burden with respect to the first element of the defense because the record contains evi-

[10]Watkins' testimony that she told Dowling of the harassment in July, even if assumed to be true, is irrelevant to the question of whether PSB acted reasonably to prevent and promptly correct Kelley's sexual harassment of Watkins. Dowling testified without contradiction that she did not pass this information on to Nicola until August. Additionally, the record evidence establishes that Dowling, although titled a "site supervisor," had no responsibility to investigate allegations of sexual harassment and no authority to discipline employees; she merely oversaw the particular site to which she was assigned.

[11]The adequacy of PSB's response should be gauged in light of the conduct reported by Watkins. Watkins did not report to Dowling that she had been raped, but rather claimed only that Kelley had fondled her breasts and thrust his hand down her pants. PSB's response to the *reported* harassment—requiring Kelley to avoid all contact with Watkins—was reasonable and sufficient given that the company had already decided to terminate Kelley for other reasons and that Kelley was no longer exercising supervisory authority. Whether the same remedy would have been adequate to remedy Watkins' subsequent claim of rape is irrelevant.

dence that another PSB employee, Kia Odom, complained of harassment by Kelley prior to the time of Watkins' complaint. However, the evidence regarding Odom's complaint is scant at best, and what little evidence there is tends to support a conclusion that Odom made her allegations *after* Kelley raped Watkins.[12] Obviously, PSB cannot have failed to exercise reasonable care to prevent the harassment of Watkins by Kelley if it was unaware, prior to Kelley's rape of Watkins, that Kelley was a potential predator. *Cf. Brown*, 184 F.3d at 396 ("The law requires an employer to be reasonable, not clairvoyant or omnipotent."). More importantly, the record contains no evidence concerning the nature of Odom's allegations or PSB's response. The only relevant testimony was from Nicola, who stated that he responded to an inquiry from Fisher regarding the Odom matter. Far from bespeaking an indifference to allegations of sexual harassment, Nicola's testimony indicates that PSB in fact investigated Odom's complaint. Accordingly, we conclude that no reasonable jury could find, based on the mere scintilla of evidence in the record, that PSB's handling of the Odom matter denoted a failure to take reasonable care to prevent and promptly correct sexual harassment.

We also conclude that no reasonable jury could fail to find that PSB satisfied the second element of the affirmative defense. That element requires the employer to establish that the employee "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Burlington Indus.*, 118 S. Ct. at 2270.[13] When an employer has in place a viable anti-harassment policy, a demonstration that an employee unreasonably failed to utilize the complaint procedure provided by the employer "will normally suffice to satisfy the employer's burden under the second element of the defense." *Id.* Simply put, "the law against sexual harassment is not self-enforcing and an employer cannot be expected to correct harassment unless the employee makes a concerted effort to inform the employer that a problem exists."

[12]For example, Dowling testified without contradiction that she learned of Odom's complaint one month before learning about Watkins' accusations; assuming Watkins first spoke to Dowling in July, Dowling would have spoken to Odom in June.

[13]PSB does not assert that Watkins failed to take appropriate action to avoid being attacked by Kelley.

Parkins v. Civil Constructors of Ill., Inc., 163 F.3d 1027, 1038 (7th Cir. 1998) (internal quotation marks omitted).

Here, there is no dispute that Watkins did not report the rape by Kelley pursuant to PSB's anti-harassment policy, which required that she contact the director of human resources.[14] And, while Watkins told Dowling that Kelley had fondled her breasts and placed his hands down her pants, she repeatedly expressed her unwillingness to pursue the matter. Watkins testified that her failure to report the incident promptly and fully resulted from embarrassment and fear of reprisal.[15] This evidence, however, is insufficient as a matter of law to establish that Watkins acted reasonably in failing to report Kelley according to the anti-harassment policy. *See Shaw*, 180 F.3d at 813 (holding that embarrassment and fear of retaliation do not justify failure to report harassment, reasoning that "[w]hile a victim of sexual harassment may legitimately feel uncomfortable discussing the harassment with an employer, that inevitable unpleasantness cannot excuse the employee from using the company's complaint mechanisms").

[14]Of course, Watkins did contact PSB's human resources department in September. By that point, however, PSB had already acted on her allegations of misconduct on the basis of the informal report to Dowling.

[15]Watkins also testified that she received no training on the policy, did not receive a copy of the employee handbook containing the policy, and never observed the memorandum concerning the policy that was prominently placed in the conference room. Watkins' lack of knowledge does not establish the reasonableness of her failure to report the harassment pursuant to the policy. PSB took pains to make its employees aware of the policy by posting the memorandum prominently in an area frequented by all PSB employees and by placing copies of the employee handbook at each and every work site (indeed, Nicola personally placed new handbooks at the work sites because the older versions were worn). Under these circumstances, a reasonable jury could only conclude that Watkins was at least constructively aware of the policy. *Cf. Shaw*, 180 F.3d at 811 (holding that employee who disclaimed actual knowledge of anti-harassment policy was constructively aware of it when she signed a document acknowledging receipt of the employee handbook, which contained the policy).

Accordingly, we hold that no reasonable jury could have concluded that PSB failed to establish the second prong of the affirmative defense.[16]

In summary, we affirm the grant of judgment as a matter of law to PSB on Watkins' claim of sexual harassment. Although Watkins established the existence of a hostile environment, we conclude that no rational jury could have failed to find that PSB established the elements of the affirmative defense to liability set forth in *Burlington Industries*.

B.

Next, Watkins maintains that the district court improperly granted judgment as a matter of law to PSB on her retaliation claim. We disagree.

Claims of retaliation may properly be analyzed according to the burden-shifting proof scheme set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Karpel v. Inova Health Sys. Servs.*, 134 F.3d 1222, 1228 (4th Cir. 1998). Under this scheme, a

[16]Even if Watkins' disclosure of the harassment to Dowling were adequate to establish that she took advantage of available preventive or corrective opportunities, our result would be the same. Although the Supreme Court did not speak to this issue in *Burlington Industries*, we cannot conceive that an employer that satisfies the first element of the affirmative defense and that promptly and adequately responds to a reported incident of sexual harassment—as PSB did here, *see supra* note 11—would be held liable for the harassment on the basis of an inability to satisfy the literal terms of the second element of the affirmative defense. *See Indest v. Freeman Decorating, Inc.*, 164 F.3d 258, 265-66 (5th Cir. 1999); *Coates v. Sundor Brands, Inc.*, 164 F.3d 1361, 1369 (11th Cir. 1999) (Barkett, J., concurring specially) ("Under the framework established by the Court in *Faragher* and *Burlington Industries*, a prompt response by an authorized agent to halt reported harassment is sufficient to relieve the employer of liability under Title VII in cases where [there has been no tangible employment action]."). Such a result would be wholly contrary to a laudable purpose behind limitations on employer liability identified by the Supreme Court in *Burlington Industries*: to promote conciliation. *See Burlington Indus.*, 118 S. Ct. at 2270.

plaintiff must first allege a prima facie case of discrimination by demonstrating that "(1) she engaged in protected activity, (2) the employer took adverse action, and (3) there was a causal connection between the two." *Id.* The burden then shifts to the employer to articulate a legitimate, nonretaliatory reason for its action; if it succeeds in doing so, the burden shifts back to the employee to establish that the employer's asserted reason is pretextual. *See id.*

Here, Watkins certainly presented a prima facie case of retaliation: She informed Kelley that she had reported the harassment to the EEOC; she was terminated; and the temporal proximity of these two events provides evidence of a causal connection between them, *see Tinsley v. First Union Nat'l Bank*, 155 F.3d 435, 443 (4th Cir. 1998) (noting that "very little evidence of a causal connection is required to establish a *prima facie* case" and that mere temporal proximity is sufficient to demonstrate causality). However, PSB offered a legitimate, nonretaliatory reason for her discharge: Watkins undisputedly left her post at Benet House, a disciplinary infraction subject to immediate termination. And, Watkins offered no evidence whatsoever that this reason was a mere pretext for retaliation. *See id.* at 444. We therefore affirm the grant of judgment as a matter of law on this claim.

III.

For the reasons set forth above, we conclude that the district court correctly granted judgment as a matter of law to PSB on Watkins' claims of sexual harassment and retaliation. Accordingly, we affirm.[17]

AFFIRMED

[17]In view of our affirmance of the grant of judgment as a matter of law, we need not consider whether the district court abused its discretion in granting the alternative motion for a new trial, nor need we address Watkins' appeal of the refusal of the district court to submit the issue of punitive damages to the jury.